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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 480

LOCAL 135, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO [illegible]-56

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NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

I.

OPINIONS BELOW.

On June 17, 1959, the Court of Appeals rendered its opinion in this proceeding, which opinion is reported at 267 F. (2d) 870, and a copy of such opinion is attached to this Petition as Appendix "A", at page 19 *et seq.*

On June 17, 1959, the Court of Appeals entered an order to the effect that the Court would issue a decree enforcing the Decision and Order of the National Labor Relations Board, in accordance with the opinion of the Court; a copy

of the order of the Court of Appeals is attached to this Petition as Appendix "B", at page 28.

On July 22, 1959, the Court of Appeals entered an order denying the Petition For Rehearing, and a copy of said order is attached to this Petition as Appendix "C", at page 29.

On July 24, 1959, the Court of Appeals issued its Decree enforcing the Decision and Order of the National Labor Relations Board; a copy of such Decree is attached to this Petition as Appendix "D", at page 30.

The Decision and Order of the National Labor Relations Board is reported at 117 N. L. R. B. 635, and a copy of said Decision and Order is attached to this Petition as Appendix "E", at page 32 *et seq.*; as the National Labor Relations Board adopted the Findings of Fact and Conclusions of Law of the Trial Examiner, such Findings and Conclusions are included as a part of Appendix "E", commencing at page 39 *et seq.*

II.

JURISDICTION.

The opinion of the Court of Appeals was rendered on June 17, 1959; the Petition For Rehearing was denied on July 22, 1959; the enforcement Decree of the Court of Appeals was issued on July 24, 1959.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1) and Section 10(e) of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 146 (1947), 29 U. S. C. Sec. 160(e).

III.

QUESTIONS PRESENTED.

1. Whether the National Labor Relations Board may issue *a broad and all inclusive* order under Section 10 (c) of the Act, which requires the Petitioner to cease and desist from inducing employees of *any and all secondary employers* to engage in a work stoppage, for the object of forcing *any secondary employer* to cease doing business, not only with the "charging party" (in this instance, Capital Paper Company), but also with *any other employers* even though the Board *did not find* that the Petitioner had violated the Act as to any other employer, other than five (5) specific employers, and even though the Board made no effort to introduce *any evidence* as to any other employers, although the Petitioner *offered* evidence that *many other employers*, employing members of the Petitioner, handled the freight of Capital.

2. Whther the affirmance by the Court of Appeals herein, of the *broad and all inclusive* order of the Board, vitiates the administrative machinery which Congress has established for the original adjudication of individual unfair labor practice charges, and as such, is contrary to decisions of the Court of Appeals in other Circuits.

3. Whether the affirmance by the Court of Appeals of the *broad and all inclusive* order of the Board, as to *any and all other employers*, actually provides for a *blanket injunction* against the Petitioner, and as such, is contrary to decisions of the Court of Appeals in other circuits.

4. Whether the Court of Appeals failed to apply the principle heretofore enunciated by this Court to the effect that an individual employee of a secondary employer has the right to refuse to handle the unfair freight of another employer.

5. Whether the Court of Appeals erred in finding that the decision of the Board was supported by *substantial evidence* contrary to the principles heretofore promulgated by this Court.

6. Whether the Court of Appeals *misconstrued* the *substantial evidence* principle, as announced by this Court, in affirming the decision of the Board that the stewards were agents of the Petitioner.

IV.

STATUTORY PROVISION INVOLVED.

The pertinent provision of the Act, Section 8 (b) (4) (A) and (B), is printed in Appendix "F", at page 66.

V.

STATEMENT OF THE CASE.

(References to the *Record* as printed and filed by the Board with the Court of Appeals, will be hereinafter referred to as "B. A.", having reference to the "Board's Appendix"; the Petitioner filed an Appendix, which was designated as "Respondent's Appendix" in the Court of Appeals, and any reference thereto will be designated as "R. A.".)

In December of 1955, Petitioner began an organizational campaign among employees of Capital; on December 16, 1955, Petitioner requested recognition from Capital, but such was declined, and three days thereafter, Petitioner filed for an election with the Board, which resulted in a representation hearing on January 10, 1956. (B. A. 51, 58.)

Threats by supervision of Capital were made to some employees who were members of the Petitioner, and subsequent thereto meetings of employees were held and con-

ducted by a representative of Petitioner, at which meetings the employees voted to strike. (R. A. 155-60.)

On February 13, 1956, Petitioner established a picket line at Capital (B. A. 51, 58-9; R. A. 160-1), and on the same date, Petitioner filed an "unfair labor practice charge" against Capital, alleging a violation of Section 8 (a) (1) of the Act, and on April 25, 1956 and or May 1, 1956 (B. A. 51, 58; 73-4), the Regional Office of the Board *and* Capital entered into a settlement of said "charge" and Capital posted a "notice" in accordance with such settlement. (B. A. 73-4.)

On February 14, 1956, the Board issued its "Decision and Direction of Election" at Capital, which Decision was not received in Indianapolis by Petitioner until February 16, 1956. (B. A. 51, 58-9.)

On February 29, 1956, Capital filed a "charge" with the Board alleging Petitioner had violated Section 8 (b) (4) (A) and (B) of the Act (B. A. 51); the "charge" (R. A. 166) as filed by Capital alleges Petitioner, or its agents, engaged in, or induced, or encouraged I & S, R. D. McDaniel, Motor Freight, and Allied to engage in a strike or concerted refusal in the course of their employment to handle, etc., goods of Capital in violation of Section 8 (b) (4) (A) and (B) of the Act; the "charge" refers only to five (5) specifically named employers, and does not contain any language with respect to *any other employer.*

The "Complaint" (R. A. 169) as issued by the Board, alleged, among other things, that Davis, Taylor Armstrong, and Doss, as stewards and agents of Petitioner, engaged in a concerted refusal to handle merchandise of Capital, not only at I & S, R. D., McDaniel, Motor Freight, and Allied, but also at premises of *other employers.*

The "Answer" (R. A. 175) as filed by the Petitioner specifically denied the material allegations of the "Complaint".

No evidence was introduced by the Board to show that Petitioner induced or encouraged the employees of *other employers* to refuse to handle merchandise of Capital; Petitioner affirmatively attempted to show that *no other employers* were involved (R. A. 112-29), but the Trial Examiner would not permit Petitioner to introduce evidence (R. A. 120) as to the fact that *many other* employers, docks, terminals, and companies, *employing members of the Petitioner*, handled merchandise of Capital from February 13, 1956 and continuously up to the time of the hearing before the Trial Examiner (R. A. 112-29); the Trial Examiner suggested the Petitioner "make an offer of proof, if you would like to do so as to what you would prove, if permitted to call these other witnesses" (R. A. 112), and Petitioner did make an "offer to prove" (R. A. 126-29), which disclosed that the Petitioner had approximately 4,000 members employed as checkers, loaders, truck drivers, and truck-driver helpers in approximately 130 to 140 truck terminals or dock terminals in the Indianapolis area, *many* of which *other employees* actually handled freight of Capital continuously from the time of the picketing and up to the date of the hearing before the Trial Examiner. (R. A. 126-9.)

At the time of Petitioner's "offer to prove", John C. Brennen was on the witness stand (R. A. 112-129); the "offer to prove" (R. A. 126-29) further specifically disclosed that Brennen was in charge of all operations at Commercial Motor Freight, Inc., and that if permitted to do so, Brennen would have testified, among other things: that previously, Commercial had handled freight for Capital; that on February 27, 1956, the same day freight was refused at the dock of R. D., a representative of Capital thereafter went to Commercial and asked if Commercial would receive freight from Capital, and Commercial advised that it would accept Capital freight; Commercial

consistently and regularly continued to handle freight of Capital to the *extent of at least a trailer-load of freight* every day after February 27, 1956; that Petitioner had available as witnesses various other terminal managers of truck docks etc., to testify that *many other employers, employing members* of Petitioner, regularly handled freight of Capital from the time of the picketing and up to the date of the hearing before the Trial Examiner; and, that Suburban Freight Line, located on the same dock with McDaniel, handled freight of Capital after picketing was commenced at Capital. (R. A. 126-29.)

Davis, Ballard, Taylor, Armstrong, and Doss were stewards at I. & S. (R. A. 20), R. D. (R. A. 90), McDaniel (R. A. 68), Motor Freight (R. A. 73), and Allied (R. A. 26) respectively; such stewards were not appointed or selected by Petitioner, but were elected, appointed, or designated by the employees themselves at their respective places of employment. (R. A. 18, 68, 90.)

There is nothing in the Constitution or laws under which the Petitioner operates, that refers to a *steward*.

Articles III and V of General Counsel's Exhibits No. 5-A and 5-B (R. A. 47-50), the same being parts of collective bargaining agreements, have a reference to stewards; Article III (R. A. 47-49) provides:

> "The Employer recognizes the right of the Union to designate a job steward and alternate to handle such Union business as may from time to time be delegated to them by the Union. *Job stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business in violation of this Agreement, or any action in violation of law, except as authorized by official action of the Union. The Employer recognizes this limitation upon the authority of job stewards and their alternates.* The Employer, in so recognizing such limitation, shall have the authority to render proper dis-

cipline, including discharge without recourse, to such job steward or his alternate, if he be an employee, in the event the job steward or his alternate has taken unauthorized strike action, slow down, or work stoppage in violation of this Agreement. Job steward shall be an employee of the Employer."

Article V (B. A. 48-50) provides in substance, among other things, that stewards shall be granted super-seniority for all purposes "if requested by Petitioner within sixty (60) days after the effective date of this Agreement."

There is no evidence that Petitioner *designated* any employee or member as a steward; there is no evidence that Petitioner designated any steward to handle any union business.

On some occasions stewards received from the Business Agents of the Union "monthly dues stamps" attached to a sheet with names of employees thereon and passed such "monthly dues stamps" out to individual employees, who in turn placed said "stamps" in their individual respective membership books; other employees who were not stewards also handled such "monthly dues stamps" in the same manner; stewards generally posted no notices or bulletins involving the Union at their respective places of employment, as such were usually and generally posted by the Business Agents of the Union; stewards did not handle or process any grievances on behalf of the Union for their fellow employees; in isolated instances, some of the stewards did present to their respective employer a grievance or complaint of one of their fellow employees, and, if an employer in such an instance did not agree completely with the grievance as submitted by the employee, then the grievance went to the Business Agent of the Union and was processed by him with the employer to the total exclusion of the employee involved and the steward, except perhaps as to a "token appearance" by the employee and the steward, or, the presenting of evidence in a hearing on the griev-

ance to ascertain the facts in order to dispose of the same; meetings of stewards were held, but they were not held regularly, and none of the stewards could exactly recall when they attended such a meeting last, or when such a meeting was held prior to the time of the hearing.

With respect to the five (5) employers (I. & S., R. D., McDaniel, Motor Freight, and Allied) where so-called alleged secondary boycott activity took place, the evidence is that the employees individually refused to handle freight of Capital on their own volition and without any previous contact with or from the Union.

At Allied Grocers, the unfair freight of Capital was refused to be handled first by an employee, who was not a steward, and who personally knew there was a picket line at the premises of Capital; it was only after said employee refused to handle the freight of Capital, that the foreman at Allied then went to the alternate steward and after that to the steward to see if they would handle the unfair freight of Capital. (B. A. 44-5; R. A. 152-4; R. A. 15-16; R. A. 37-41; B. A. 10-11; B. A. 7.)

With respect to McDaniel Freight Lines, Inc. (McDaniel), Motor Freight Corporation (Motor Freight), R. D. Motor Express Company (R. D.), Indianapolis and Southern Motor Express, Inc. (I. & S.), the uncontradicted evidence was that the trucks of those companies always went to the premises of Capital to pick up and receive freight before the strike started; Capital never went to the docks of said carriers prior to the strike and picketing; however, after the strike and the picketing commenced, the drivers of such carriers refused to go through the picket line at Capital, and thereafter, it was Capital that changed the regular procedure and took the affirmative action of going to the docks of those five companies.

At McDaniel Freight Lines, Inc. (McDaniel), Taylor, the steward, testified that a shipment came from Capital to

McDaniel dock and that such was all mixed up; that it was temporarily "docked over night", but it was shipped out the next morning; as to a second alleged incident at McDaniel, Taylor, the steward, was asked to handle freight of Capital, but at that time he was off duty and wasn't even working; the evidence is that other employees on the docks were each asked individually to handle the Capital freight, but each individually refused. (B. A. 22-5; R. A. 58-9; R. A. 70.)

At Motor Freight Corporation (Motor Freight), Armstrong was a steward and worked full time as a truck driver and dockman; he had personally seen the picket line at Capital; subsequently, a truck of Capital came to the dock of Motor Freight and Armstrong refused to accept such freight on the basis that Capital was on strike and there was a picket line at Capital's place of business. (B. A. 26-7; R. A. 74-6.)

At Indianapolis and Southern Motor Express, Inc. (I. & S.), the facts were similar to those at Motor Freight Corporation; Davis, a steward at I & S, had been driving a truck for I & S and came back to the I & S dock; at that time, a truck of Capital came to the I & S dock, and Davis refused to handle the freight because as he stated, it was unfair freight since it had come through a picket line. (R. A. 56-57; R. A. 50-2.)

As to R & D Motor Express Company (R. D.), a Capital truck came to the dock with some freight and employees Erwin and McClara simply refused to handle the Capital freight on their own initiative and of their own individual choice; neither Erwin nor McClara was a steward or alternate steward. (B. A. 32-4; R. A. 87; R. A. 92-6; R. A. 109-110.)

The facts are uncontradicted, that in each instance the men on the docks refused to handle the freight of Capital of their own volition; it was only after the men individually

refused to handle Capital's unfair freight, that in some instances, contacts were made with the Union at the instigation and request of either representatives of Capital or representatives of the employers of the men on the docks.

The Board found that the stewards were agents of Petitioner (B. A. 52), and that the Petitioner had violated Section 8 (b) (4) (A) and (B) of the Act by inducing and encouraging the employees of the aforementioned five (5) specific employers (I. & S., R. D., McDaniel, Motor Freight, and Allied), not to do business with or handle the freight of Capital Paper Company and Consolidated Sales, Inc. (jointly referred to herein as Capital). (B. A. 52.)

The Board ordered Petitioner to cease and desist from:

> "Inducing or encouraging the employees of Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation, R. D. Motor Express, *or any other employer* (other than Capital Paper Company and Consolidated Sales, Inc.) to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; where an object thereof is (1) to force or require Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation, R. D. Express, *or any other employer* to cease doing business with Capital Paper Company and Consolidated Sales, Inc., *or with any other person*, or (2) to force or require Capital Paper Company and Consolidated Sales, Inc., to recognize or bargain with Respondent as the representative of their employees unless Respondent is certified as the representative of such employees pursuant to the provisions of Section 9 of the Act." (Our italics.) (B. A. 53.)

The Court of Appeals issued a decree enforcing the order of the Board, holding that the stewards were agents of Petitioner, that Petitioner had violated Sec. 8 (b) (4) (A) and (B), and that the Board could issue a broad order to cease and desist against Petitioner *as to any other employer*.

ARGUMENT.

(Reasons for granting the writ.)

1. The Court of Appeals for the First, Fifth, Seventh, and District of Columbia Circuits have issued conflicting opinions concerning the proper scope of cease and desist orders in cases arising under Section 8(b)(4)(A) and (B) of the Act.

The order of the Board, as enforced by the Court of Appeals for the Seventh Circuit, is all extensive and inclusive, in that it extends the scope and coverage of the ordinary cease and desist order to cover *any and all employers* as well as Capital; as written and enforced, the order generally and conclusively prohibits inducement of the employees *of all employers*, anywhere at any time, from engaging in the refusal to handle freight, which has as its object the forcing of their employer to cease doing business with *any other employer*.

In short, *any alleged* secondary boycott "charge" involving the Petitioner can be litigated in a contempt proceeding rather than before the Board, thereby vitiating the administrative machinery which Congress has established for the original adjudication of individual unfair labor practice charges.

This same type of order of the Board has been considered by four Circuits of the Court of Appeals with conflicting results.

The Court of Appeals for the Fifth Circuit has rejected enforcement of this type of order. *Truck Drivers Local 728 v. N. L. R. B.* (C. A. 5, April 8, 1959), 265 F. (2d) 439;

N. L. R. B. v. *Local 926, International Union of Operating Engineers* (C. A. 5, May 26, 1959), 267 F. (2d) 418.

The Court of Appeals for the District of Columbia is apparently divided on the question. In the case of *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Drivers and Helpers, Local No. 554* v. *N. L. R. B.* (C. A. D. of C., Dec. 4, 1958), 262 F. (2d) 456, the Court of Appeals for the District of Columbia denied the enforcement of such an order, but subsequently, another division of the same court enforced a *broad* order of the Board in the case of *Central States Drivers Council, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, etc., Local No. 147* v. *N. L. R. B.* (C. A. D. of C., May 7, 1959), 267 F. (2d) 166.

The Court of Appeals for the First Circuit has also affirmed a *broad* order of the Board in the case of *N. L. R. B.* v. *Springfield Building and Construction Trades Council, et al.* (C. A. 1, Dec. 31, 1958), 262 F. (2d) 494.

2. The proper scope of remedial orders, in cases involving Section 8(b)(4)(A) and (B), is of vital importance to the administration of the Act, and has not been expressly considered by this Court.

Broad orders, of the type issued in the case at bar, are now commonly authorized by the Board, notwithstanding the prior policy of the Board to the contrary. (*Thurston Motors Lines, Inc.*, 110 N. L. R. B. 748-9).

This issue, namely, the proper scope of orders of the Board, in cases involving Section 8(b) (4) (A) and (B), has never been expressly considered by this Court.

The disposition of cases arising under Section 8(b) (4) (A) and (B) is often crucially dependent upon such diver-

gent, unsettled and vague questions as (a) performance of "struck work" (*Business Machine & Office Appliance Mechanics—Royal Typewriter Company*, 111 N. L. R. B. 317; enforcement denied, (C. A. 2, Dec. 22, 1955) 228 F. (2d) 553); (b) existence of a "home situs" (*Teamsters Local 968—Otis Massey Co.*, 109 N. L. R. B. 275; enforcement denied, (C. A. 5, Aug. 2, 1955) 225 F. (2d) 205); (c) single "employer" or "ally" status of separate corporations (*Teamsters Local 688—Bachman Machine Co.*, 121 N. L. R. B. No. 165; rev'd, (C. A. 8, May 15, 1959) 266 F. (2d) 599); (d) "employee" status of foreman holding union membership (*Carpenters District Council of Milwaukee County—Del Mar Cabinet Company*, 121 N. L. R. B. No. 140; enforcement denied, (C. A. D. of C., July 9, 1959) ..... F. (2d) ....., 37 Labor Cases, par. 65,595); and (e) other issues for which no label has been devised (*Teamsters Local No. 24—Ace Transportation Co.*, 120 N. L. R. B. 1103; enforcement denied, (C. A. D. of C., March 5, 1959) 266 (2d) 675).

Furthermore, the question as to whether or not an *alleged* unfair labor practice charge has been committed can and usually does entail a prolix hearing, involving many witnesses.

Therefore, the effect of the type of order as issued in the instant case will be to convert the Court of Appeals into a "labor court of first instance by virtue of its contempt powers" (*Teamsters Local 554* v. *N. L. R. B.* (C. A. D. of C., Dec. 4, 1958), 262 F. (2d) 456-63), contrary to the rule expressed by this Court in *N. L. R. B.* v. *Express Publishing Co.*, 312 U. S. 426-435. *Cf. May Department Stores* v. *N. L. R. B.*, 336 U. S. 376, 388.

3. The Court of Appeals failed to apply the rule as announced by this Court to the effect that an individual has the right to refuse to handle "unfair goods".

In its decision, the Court has failed to apply the rule of law as set forth in the decision of the Supreme Court in the case of *Local 1976, United Brotherhood of Carpenters, etc.* v. *N. L. R. B.*, 78 S. Ct. 1011, 357 U. S. 93, for in each instance of a refusal on the part of an employee of a secondary employer to handle merchandise of Capital, the employee or employees involved, on their own volition and without previous contact with or from the Union, individually refused to handle Capital freight.

The facts are, that in each instance the men on the docks refused to handle the freight of Capital of their own volition; it was only after the men individually refused to handle Capital's unfair freight, that in some instances, contacts were made with the Union at the instigation and request of either representatives of Capital or representatives of the employers of the men on the docks; in each instance, the uncontradicted evidence is that the individual employee individually refused of his own volition to handle the Capital unfair freight; this activity should not be construed as *substantial evidence* of secondary boycott activity under the reasoning of the Supreme Court in *Local 1976 United Brotherhood of Carpenters, etc.* v. *N. L. R. B.*, 78 S. Ct. 1011, 357 U. S. 93.

4. The Court misconstrued the "substantial evidence" rule applied by the Supreme Court in Universal Camera Corporation v. N. L. R. B., 71 S. Ct. 456, 340 U. S. 474, in holding that the findings of the Board, to the effect that the stewards were agents of the Union, were sustained by substantial evidence.

There is no evidence in the record to show that any Officer or Business Agent of the Union did anything, failed

to do anything, or said anything, that could cause anyone to infer or imply that the Union induced or encouraged the employees of any secondary employer to engage in a strike or concerted refusal in the course of their employment to handle freight of Capital; there is a complete lack of evidence with respect to so-called secondary boycott activity on the part of Officers and Business Agents of the Union.

However, the Court agreed with the Board that the stewards acted as agents of the Union in the inducement and encouragement of employees to engage in a concerted refusal to handle the freight of Capital.

Under the rules of the Board itself, as clearly and specifically announced in the case of *International Longshoremen's and Warehousemen's Union, C. I. O.; Local No. 6, etc., et al., and Sunset Line and Twine Company* (1948), 79 N. L. R. B. 1487, it was the duty of the Board to prove by substantial evidence a relationship of agency between the Union and the stewards, and it was not incumbent upon the Union to introduce any evidence negating such relationship.

Neither the Board nor the Court of Appeals can hold automatically as a matter of law that a steward is an agent of a union, for such question must be determined by the facts in each individual case.

Under the opinion and ruling in the case of *Universal Camera Corporation* v. *N. L. R. B.*, 71 S. Ct. 456, 340 U. S. 474, and especially in view of the evidence in the instant case, or perhaps one should say the lack of evidence herein, the Court could not hold that the finding of the Board was sustained by *substantial evidence* in so far as the stewards were concerned; there is no *substantial evidence* in the record in this proceeding under which it could be held that the stewards were agents of the Union.

SUMMARY.

The National Labor Relations Board may not issue a *broad and all inclusive order* under Section 10 (c) of the Act, which requires the Petitioner to cease and desist from inducing employment of *any and all secondary employers* to engage in a work stoppage, for the object of forcing *any secondary employer* to cease doing business, not only with the "charging party" (in this instance, Capital Paper Company), but also with *any other employers* since the Board *did not find* that the Petitioner had violated the Act as to any other employer, other than five (5) specific employers, and since the Board made no effort to introduce *any evidence* as to any other employers, although the Petitioner *offered* evidence that *many other employers*, employing members of the Petitioner, handled the freight of Capital.

The affirmance by the Court of Appeals of the *broad and all inclusive* order of the Board, converts the Court of Appeals into a labor court of first instance, and thereby vitiates the administrative machinery which Congress has established for the original adjudication of individual unfair labor practice charges.

The affirmance by the Court of Appeals of the broad and all inclusive order of the Board, as to *any and all other employers*, actually provides for a *blanket injunction* against the Petitioner, and as such, is contrary to decisions of the Court of Appeals in other circuits.

The Court of Appeals failed to apply the principle heretofore enunciated by this Court to the effect that an individual employee of a secondary employer had the right to refuse to handle the unfair freight of another employer.

The Court of Appeals erred in finding that the decision of the Board was supported by *substantial evidence* con-

trary to the principles heretofore promulgated by this Court.

The Court of Appeals misconstrued the *substantial evidence* principle, as announced by this Court, in affirming the decision of the Board that the stewards were agents of the Petitioner.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

EDWARD J. FILLENWARTH,
1212 Merchants Bank Building,
Indianapolis 4, Indiana,
Attorney for Petitioner.

Of Counsel:
GREGG, FILLION, FILLENWARTH & HUGHES,
1212 Merchants Bank Building,
Indianapolis 4, Indiana.

APPENDIX "A".

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

September Term, 1958, April Session, 1959.

No. 12541.

National Labor Relations Board, *Petitioner*,
vs.
Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, *Respondent*.

Petition for Enforcement of an Order of the National Labor Relations Board.

Decided June 17, 1959.

Before MAJOR, HASTINGS and KNOCH, *Circuit Judges*.

MAJOR, *Circuit Judge*. This case is here upon the petition of the National Labor Relations Board for enforcement of its order issued against respondent Union on March 14, 1957, pursuant to Sec. 10 (c) of the National Labor Relations Act as amended (61 Stat. 136, 29 U.S.C. Sec. 151 *et seq.*). This court has jurisdiction under Sec. 10 (e) of the Act, the unfair labor practices found by the Board having occurred in Indianapolis, Indiana, within

this judicial circuit. The Board's findings of fact, conclusions of law and order are reported at 117 N.L.R.B. 635. The Board found that the Union violated Sec. 8 (b) (4)(A) and (B) of the Act by inducing and encouraging the employees of concerns doing business with Capital Paper Company and Consolidated Sales, Inc. (herein jointly referred to as Capital), not to handle Capital freight, with the objective of disrupting Capital's business relations with these concerns and of forcing Capital to deal with the Union as the collective bargaining representative of its employees, even though it had not been certified by the Board.

The two concerns jointly referred to as Capital constitute a unified enterprise engaged in the wholesale distribution of paper products, building materials, appliances and other items. Their purchases and sales in interstate commerce are substantial. Thus, no jurisdictional issue is presented.

The contested issues are two: (1) whether the Board properly found that the Union was responsible for stewards as agents of the Union, and (2) whether the Board's order properly enjoins the Union from violating Sec. 8 (b) (4)(A) and (B), not only as to Capital but as to all other employers. Relative to the first issue, respondent urges that the stewards were not its agents, that it was not responsible for their conduct and activities and, predicated upon this contention, that testimony of statements made by such stewards was hearsay and therefore improperly admitted by the Trial Examiner.

A detailed statement or analysis of the evidentiary facts relied upon by the Board in support of its decision would unduly prolong this opinion and, in our judgment, would serve no useful purpose. A careful study of the evidence, oral and documentary, is convincing that the Board's findings are supported and that its order is

proper and should be enforced. We shall, therefore, attempt to limit our discussion to some of the more salient aspects of the situation.

In December, 1955, respondent began an organizational campaign among the employees of Capital. On December 16, it requested recognition. This was denied by Capital and, on December 19, the Union filed a representation petition with the Board on which a hearing was held January 10, 1956. On February 13, the Union established a picket line at the premises of Capital. On the following day, the Board issued its Decision and Direction of Election in the representation case. On February 23, respondent sought to withdraw its representation petition, which request the Board denied by an order dated February 29. On the same day, Capital filed the charge upon which the complaint in the present proceeding is based. On April 13, the United States District Court for the Southern District of Indiana entered an order enjoining respondent from engaging in conduct violative of Sec. 8 (a)(4)(A) and (B) of the Act, pending adjudication before the Board. At the time of the hearing before the Trial Examiner, respondent was still picketing the premises of Capital.[1]

Swiftly following the establishment of the picket line at the premises of Capital, a series of events occurred which in the main constitute the basis for the unfair labor practices with which respondent is charged. In summary, these events consisted of a refusal on the part of the stewards and other employees of five named secondary employers, all customers of Capital, to accept or unload goods and merchandise consigned to such secondary employers by Capital. The five named secondary employers are Allied Grocers, Southern Motor Express, Inc., McDaniel

1. Only 17 of the 67 employees of Capital joined in the strike called by respondent and, in an election subsequently held by the Board, respondent lost by a vote of 4 to 39.

Freight Lines, Inc., Motor Freight Corporation and R. D. Motor Express Company. The employees of all of these secondary employers were members of respondent Union. Refusals to receive freight from Capital at the premises of each followed a same or similar pattern. They were made or participated in by stewards, assistant stewards and other employees. The reasons generally assigned for such refusals were that the shipments from Capital "had come through a picket line," were "unfair freight" and "hot goods." On several occasions a driver of a Capital truck would insist that the shipment should be accepted because there was no legal strike at Capital. Thereupon, a steward would telephone the Union hall (respondent's), where he was told that there was a strike and picket line at Capital. The refusal to accept a shipment followed. There was testimony by one witness that he was told by the dock employees at McDaniel Freight Lines that they refused to handle the freight "because the Union had advised them not to." On cross-examination, however, this witness explained this testimony with the statement, "Being a former Union member I knew that in the contract there is a 'hot goods' clause that declares that 'unfair goods' does not have to be handled by the Union member."

A revealing incident is shown in connection with the refusal to receive Capital freight at the premises of R. D. Motor Express Company. There, employee Ervin called the Union hall to ascertain if there was a strike at Capital. Immediately afterward he stated, "I can't handle that. * * I might get hell if I did or if I didn't." In response to an inquiry by a representative of management as to why the shipment would not be accepted, Ervin stated, "Well, I just called the hall, and he said it was 'hot goods'." At that time Ervin signed the following statement, "This is to certify that Capital Paper Co. offered shipments this

date for transport to Muncie and Anderson, Indiana and shipments were refused at this dock due to the fact that Capital Paper is on strike. Union Hall was called and approval given to refusal." Respondent's officials, including its president, when advised of the written statement which Ervin had made, became much concerned. They demanded its return and in order to obtain same went so far as to cause a work stoppage at the employer's plant.

From the circumstances related and others shown by the record, the Trial Examiner concluded that the stewards "were acting within the scope of their authority and that their conduct was likewise binding upon the Union." This conclusion of the Trial Examiner and his findings in its support were approved by the Board, and we think properly so.

Respondent, in contending that the stewards were not its agents or that it was not responsible for their activities, relies, erroneously we think, upon common law principles. Section 2 (13) of the Act provides:

> "In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

In *N.L.R.B.* v. *International Brotherhood of Teamsters, etc.*, 228 F. 2d 83, 84, the court in discussing a similar situation stated:

> "• • • there is substantial evidence to support the findings of the Board, [citing case] that Parks was acting with the knowledge and acquiescence of the Union and that he had implied authority to do what he did."

See also *N.L.R.B.* v. *Acme Mattress Co., Inc.*, 192 F. 2d 524, 528, and *N.L.R.B.* v. *International Brotherhood of Teamsters, etc.*, 249 F. 2d 292.

Respondent, in denying responsibility for the acts of the stewards, places great reliance upon a decision of this court in *N.L.R.B.* v. *P. R. Mallory Co., Inc. et al.*, 237 F. 2d 437. It is true in that case we held that a minor group of stewards who led a movement to compel the discharge of an employee because of non-membership in the Union were not acting on behalf of the Union. Our conclusion was based largely on the undisputed fact that the stewards were acting contrary to Union policy and to the express directions which they had received from the Union. In contrast, the stewards in the instant situation were acting in conformity with the policy fixed and established by the Union.

Respondent Union had a contract with each of the secondary employers[2] which contained a so-called "hot cargo" clause. These agreements provided in part:

> "It shall not be a violation of this Agreement and it shall not be cause for discharge if any employee or employees refuse to go through the picket line of a Union or refuse to handle unfair goods. * * The Union and its members, individually and collectively, reserve the right to refuse to handle goods from or to any firm, or truck which is engaged or involved in any controversy with this or any other Union; and reserve the right to refuse to accept freight from, or to make pickups from, or deliveries to establishments where picket lines, strikes, walkouts or lockouts exist."

Thus it appears that the Union by those agreements negotiated by it on behalf of its members definitely established a policy against the acceptance of "hot cargo" shipments. More than that, it seems that the Union is in a poor position to disclaim responsibility for the acts of its members authorized by an employment agreement entered into at the behest of the Union.

2. Respondent's agreement with Allied Grocers was not offered in evidence.

In the hearing before the Trial Examiner, these "hot cargo" agreements which the Union had with the secondary employers were strongly relied upon in defense of the unfair labor practices charged. In this connection it is significant that Board member Murdock dissented from the Decision and Order of the Board, not because respondent was not responsible for the acts of the stewards in refusing to accept shipments from Capital but solely on the ground that it was protected by reason of the "hot cargo" agreements with the secondary employers. He stated, "I believe that the Respondent could lawfully instruct its members to refrain from handling the Charging Party's freight." This defense, however, is no longer available to respondent by reason of the recent decision of the Supreme Court in Local 1976, *United Brotherhood of Carpenters, etc.* v. *N.L.R.B.*, 357 U. S. 93. In connection with this decision, it should be noted that in the instant case none of the secondary employers consented to the refusal of the stewards and other Union members to accept shipments from Capital. On the other hand, they urged, without success, that the employees receive such shipments.

Our agreement with the Trial Examiner and the Board, that the stewards and other Union members in refusing to accept shipments from Capital were acting in conformity with Union policy and for and on its behalf, dissipates respondent's contention relative to the admission of hearsay testimony.

We agree with the Board's decision that the objective of respondent's conduct was to force the various secondary employers to cease doing business with Capital. More than that, in view of the circumstances relative to the representation proceedings initiated before the Board by respondent and the occurrences at the premises of Capital as heretofore set forth, we agree with the Board that an-

other objective of respondent was to force Capital to recognize respondent as the bargaining agent for Capital's employees. This conclusion is a reasonable if not an inescapable inference from the circumstances related.

The Board directed respondent to cease and desist its unfair labor practices not only as to the employers directly involved in the instant proceeding but as to "any other employer." Respondent insists that such order is too broad and should be modified, based upon the premise that there was no proof of any unfair labor practice as to any other employer and that it offered to prove that many secondary employers continued doing business with Capital.

The Board's order followed the recommendations of the Trial Examiner. The latter in his report stated:

> "Having found that the Respondent has violated Section 8(b)(4)(A) and (B) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. In determining the scope of the recommended order it is relevant to note that in three other cases within the recent past the Board found that the Respondent here involved violated Section 8(b)(4). Local Union No. 135, affiliated with International Brotherhood of Teamsters (Irvin J. Cooper, et al.), 101 NLRB 1284; Local Union No. 135, affiliated with International Brotherhood of Teamsters (Hoosier Petroleum Company, Inc.), 106 NLRB 629, enfd., 212 F. 2d 216 (C. A. 7); Local Union No. 135, affiliated with International Brotherhood of Teamsters (Marsh Foodliners Inc.), 114 NLRB No. 108."

In *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348, the court stated:

> "* * the relieg which the statute empowers the Board to grant is to be adapted to the situation which calls for redress."

In *N. L. R. B.* v. *Express Publishing Co.*, 312 U. S. 426, 436, the court stated:

> "Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts."

The Board is authorized to restrain other violations, the danger of whose commission in the future is to be anticipated from conduct in the past. *N. L. R. B.* v. *United Mine Workers*, 195 F. 2d 961, 963, and cases therein cited.

As pointed out by the Trial Examiner, this is not an isolated case so far as the Board is concerned. It has previously considered and decided that respondent committed the same or similar unfair labor practices. Respondent's request that the order be modified is denied.

The Board's petition for enforcement of its order is granted and a decree will be entered accordingly.

APPENDIX "B".

UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Chicago 10, Illinois.

Wednesday June 17, 1959.

Before:

Hon. J. Earl Major, Circuit Judge.
Hon. John S. Hastings, Circuit Judge.
Hon. Win G. Knoch, Circuit Judge.

National Labor Relations Board, *Petitioner.* vs. Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, *Respondent.*	Petition for Enforcement of an Order of the National Labor Relations Board.
No. 12541	

This cause came on to be heard on the petition of the National Labor Relations Board for Enforcement of its order entered on March 14, 1957, Respondent's answer to said petition, and the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the petition of the National Labor Relations Board for enforcement of its order be granted and a decree will be entered accordingly, in accordance with the opinion of this Court filed this day.

APPENDIX "C".

UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Chicago 10, Illinois.

Wednesday, July 22, 1959.

Before:

Hon. J. Earl Major, Circuit Judge.
Hon. John S. Hastings, Circuit Judge.
Hon. Win G. Knoch, Circuit Judge.

National Labor Relations Board, *Petitioner.* No. 12541 *vs.* Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, *Respondent.*	Petition for Enforcement of an Order of the National Labor Relations Board.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

APPENDIX "D".

UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

National Labor Relations Board, *Petitioner.* *vs.* Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, *Respondent.*	No. 12541.

DECREE.

Before: Major, Hastings and Knoch, Circuit Judges.

This Cause came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against the Respondent, its officers, representatives, agents, successors, and assigns, on March 14, 1957. The Court heard argument of respective counsel on May 12, 1959, and has considered the briefs and transcript of record filed in this cause. On June 17, 1959, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's order.

On Consideration Whereof, it is ordered, adjudged and decreed by the United States Court of Appeals for the Seventh Circuit the said order of the National Labor Relations Board in said proceeding be enforced, and that Local

135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, its officers, representatives, agents, successors, and assigns, abide by and perform the direction of the Board in said order contained.

/s/ J. EARL MAJOR,
Judge, United States Court of Appeals for the Seventh Circuit.

s/ JOHN S. HASTINGS,
Judge, United States Court of Appeals for the Seventh Circuit.

s/ WIN G. KNOCH,
Judge, United States Court of Appeals for the Seventh Circuit.

A True Copy:
Teste:

KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX "E".

117 NLRB No. 95. D-320 Indianapolis, Ind.

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of Americ AFL-CIO and Capital Paper Company and Consolidated Sales, Inc.	Case No. 35-CC-34.

DECISION AND ORDER.

On August 24, 1956, Trial Examiner Robert E. Mullin issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error

was committed. The rulings are hereby affirmed.[1] The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER.

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Respondent, Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, its officers, representatives, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Inducing or encouraging the employees of Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation, R. D. Motor Express, or any other employer (other than Capital Paper Company and

1. In its exceptions, the Respondent urges that the Trial Examiner improperly admitted hearsay evidence relating to certain statements and conduct of shop stewards at the secondary employers premises involved herein to establish that the Respondent induced or encouraged the secondary employees to refuse to handle the Charging Party's freight. The Respondent contends that the General Counsel failed to establish that the shop stewards were acting as agents for the Respondent and therefore evidence relating to their statements and conduct constituted hearsay evidence as to Respondent. Like the Trial Examiner, we find that the preponderance of the evidence in the record as a whole establishes that the shop stewards were acting as agents for the Respondent and that their statements and conduct are binding on Respondent. See e.g., *Local 657, International Brotherhood of Teamsters, etc. (Southwestern Motor Transport)*, 115 NLRB 981, 986; *International Brotherhood of Teamsters, etc., Local 182 (Harold R. Jones)*, 111 NLRB 952, 953. Accordingly, we find that this evidence was not hearsay and that the Trial Examiner properly admitted it into the record. The Respondent's exception to its admission is therefore overruled.

Consolidated Sales, Inc.) to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is (1) to force or require Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation, R. D. Express, or any other employer to cease doing business with Capital Paper Company and Consolidated Sales, Inc., or with any other person, or (2) to force or require Capital Paper Company and Consolidated Sales, Inc., to recognize or bargain with Respondent as the representative of their employees unless Respondent is certified as the representative of such employees pursuant to the provisions of Section 9 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its business offices at Indianapolis, Indiana, and all other places where notices to its members are customarily posted, copies of the notice attached hereto and marked Appendix.[2] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by an official representative of Respondent, be posted immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(b) Cause a copy of said notice to be printed, at the Re-

2. If this Order is enforced by a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order".

spondent's expense, in a newspaper of general circulation in Indianapolis, Indiana;

(c) Mail to the Regional Director for the Ninth Region signed copies of said notice for posting by Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation and R. D. Motor Express, if willing, in places where notices to their employees are customarily posted;

(d) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C. Mar. 14, 1957.

BOYD LEEDOM,
Chairman,

PHILIP RAY RODGERS,
Member,

STEPHEN S. BEAN,
Member,

(Seal) *National Labor Relations Board.*

ABE MURDOCK, Member, dissenting:

I cannot concur in my colleague's finding that the Respondent violated Section 8 (b) (4) (A) or (B) of the Act in this proceeding. The contracts executed between the Respondent and the secondary employers involved herein contain so-called "protection of rights" or "hot cargo" clauses in which the secondary employers agreed that the Respondent and its members who are covered by these contracts could "refuse to handle goods from or to any firm or truck which is engaged or involved in any controversy with this or any other Union," and could "refuse to accept freight from, or to make pickups from, or deliveries to establishments where picket lines, strikes, walk-outs or lock-

outs exist." For the reasons set forth in my dissenting opinion in *Local 1976, United Brotherhood of Carpenters and Joiners (Sand Door & Plywood Corporation)*, 113 NLRB 1210, I believe that the Respondent could lawfully instruct its members to refrain from handling the Charging Party's freight. I would therefore dismiss the complaint in this case.

Dated, Washington, D. C. Mar. 14, 1957.

ABE MURDOCK,
Member,
National Labor Relations Board.

APPENDIX.

NOTICE TO ALL MEMBERS OF LOCAL 135, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

Pursuant to

A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

WE WILL NOT induce or encourage the employees of any employer other than Capital Paper Company and Consolidated Sales, Inc., to engage in a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on goods, articles, or commodities, or to perform any services, where an object thereof is to force or require any employer to cease doing business with any other person or to force or require Capital Paper Company and Consolidated Sales, Inc., to recognize the undersigned union as the representative of their employees, unless and until certified by the National Labor Relations Board.

LOCAL 135, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO
(Labor Organization.)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

IR-936
Indianapolis, Ind.

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD,

Division of Trial Examiners,

Washington, D. C.

LOCAL 135, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and CAPITAL PAPER COMPANY AND CONSOLIDATED SALES, INC.	Case No. 35-CC-34

Mr. Clifford L. Hardy, of Cincinnati, Ohio, for the General Counsel.

Mr. Edward J. Fillenwarth, of Indianapolis, Ind., for the Respondent Union.

Duck & Neighbours, by Mr. William E. Roberts, of Indianapolis, Ind., for the Charging Party.

Before: Robert E. Mullin, Trial Examiner.

INTERMEDIATE REPORT.

STATEMENT OF THE CASE.

Upon charges duly filed by Capital Paper Company and Consolidated Sales, Inc. (herein referred to jointly as Capital or the Employer), the General Counsel for the National Labor Relations Board, by the Regional Director of the Ninth Region (Cincinnati, Ohio), issued a complaint against

Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (herein called Local 135 or Union), alleging that it had engaged in, and was engaging in conduct constituting unfair labor practices affecting commerce within the meaning of Section 8 (b) (4) (A) and (4) (B) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charges, complaint, and notice of hearing thereon, were duly served upon the Respondent Union. In its answer, duly filed, the latter denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on May 22, to May 24, 1956, at Indianapolis, Indiana, before the undersigned Trial Examiner. All parties were represented at the hearing at which full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded all parties. Counsel waived oral argument at the close of the hearing. On July 16, 1956, all parties submitted briefs which have been fully considered by the undersigned.

From my observation of the demeanor of the witnesses, and upon the entire record in the case, I make the following:

Findings of Fact.

I. The business of the employer.

Capital and Consolidated are Indiana corporations, the headquarters and principal place of business for which occupy a common premises in Indianapolis where they are engaged in the wholesale distribution of paper products, building materials, appliances and other items. In addition to having several officers common to Capital and Consolidated, many of the employees handle merchandise for both companies and the entire operations of the two corporations are closely related. In a Decision and Direction

of Election issued on February 14, 1956,[1] the Board found that Capital and Consolidated were a single employer within the meaning of the Act. On the foregoing facts, that is also my conclusion and I so find.

During the 12-month period ending in December 1955, Capital and Consolidated purchased merchandise valued at $8,269,698, approximately 90 percent of which came from outside the State of Indiana. During the same period, sales of the two companies totalled $10,471,131. The General Counsel submitted evidence, which I credit, that of this latter amount $129,121 represented sales to out-of-State customers. In addition to its headquarters in Indianapolis, Capital maintains a branch office in Columbus, Ohio, and other branches in Evansville and Terre Haute, Indiana. On these facts, I find that Capital and Consolidated are engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED.

The Union is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES.

A. Introduction.

In December 1955 the Union began an organizational campaign among the employees of the Charging Party. On December 16 it requested recognition. This was declined and on December 19 the Union filed a representation petition with the Board (Case No. 35-RC-1250) on which a hearing was held January 10, 1956. On February 13 the Union established a picket line at the premises of the Employer and filed a charge alleging that the latter had vio-

1. *Capital Paper Company and Consolidated Sales, Inc.*, Case No. 35-RC-1250.

lated Section 8 (a) (1) of the Act.[2] The following day the Board issued its Decision and Direction of Election in Case No. 35-RC-1250.[3] On February 23, the Union sought to withdraw its representation petition. The Board denied this request by an order dated February 29. That same day the Employer filed the charge upon which the complaint in the present proceeding is based. On April 13, the United States District Court for the Southern District of Indiana entered an order enjoining the Respondent from engaging in conduct violative of Section 8 (b) (4) (A) and (B) of the Act pending an adjudication of this case before the Board. At the time of the hearing before the undersigned the Respondent was still picketing the premises of the Employer.

B. The facts.

On February 14, a Company truck arrived at the warehouse of Allied Grocers of Indiana, Inc. (herein called Allied), a concern at which the dock and warehouse employees are represented by the Respondent Union. Howard Swickheimer, foreman for Allied, asked Kenneth Imhausen, a dock employee, to receive the freight. The later declined and remarked in so doing that Capital was on strike. The foreman then made the same request of Shirley Green, another employee who was also an alternate steward for the Union. Green likewise refused to handle the freight. Swickheimer then asked Louis Doss, the union steward, whether he would receive the shipment. Doss declined, initially, on the ground that Capital was on strike. At that

2. The Regional Office and the Employer entered a settlement agreement as to this charge on May 1. At the time of the hearing the Union had an appeal from this settlement pending with the General Counsel. On May 18, the Union filed a charge alleging that the Employer had violated Section 8 (a) (3) of the Act by refusing to reinstate those employees who had gone on strike the preceding February.

3. The parties stipulated that copies of this decision did not reach Indianapolis until February 16.

point, R. W. Harris, acting superintendent of the warehouse, arrived and questioned Doss' assertion that there was a strike in progress at Capital. Doss and Green then used the foreman's office to telephone the Union. After completing the call, Doss returned to tell Harris "It remains as it was", and stated further that "the reason it [the truck] wasn't going to be unloaded was Capital Paper was on a strike, and it was merchandise through a picket."[4] After Swickheimer was unable to get any of the employees to unload the truck it finally left. At the hearing Doss was asked whether he told any of his fellow employees there was a picket line at Capital Paper. He replied, "A. Yeah; a lot of the other boys that was down there passed by and asked why we didn't receive it, and I told them that there was a strike on out there. Q. Did you tell them you had called the Union on it? A. Yes, sir." Andrew J. Freeman, an order filler in the Allied warehouse, testified that on February 14 he inquired of Doss as to why the Capital truck had left without unloading and that the latter had told him that Capital "had a strike on—a picket line". He further testified that since that time he has refused to fill any orders for the products of the Charging Party.

For over 2 months after the incident described above Capital made no deliveries directly to Allied. Instead, products destined for that customer were sent first to Merchandise Warehouse, an Indianapolis establishment with nonunion labor, which, in turn, delivered the Employer's goods to Allied. Early in May, however, Capital attempted to make another delivery, directly to Allied. Swickheimer asked Doss and an employee named Richard Casteller to unload the truck. Both declined on the ground that there was still a picket line at the Employer's premises.

4. The foregoing quotation is from the credible, undenied testimony of Harris.

Doss testified that, on this occasion, after several of the employees had refused to unload the truck, Mr. Kovernor, superintendent of Allied, came up to him and demanded "either you settle it now or you unload the truck yourself." According to Doss, he replied "Well, Mr. Kovernor, I don't think I want to unload it." Sam Lovinger, superintendent of Capital, who was present at the time, testified that Kovernor then asked that the truck leave without unloading "so that he wouldn't have any trouble with his boys and the Union." Since that time Capital has had no further orders from this customer.

On February 15, a Capital truck with merchandise consigned to a customer in Evansville, Indiana, arrived at the terminal of Indianapolis and Southern Motor Express, Inc. (herein called I & S). The dock employees of the latter are represented by the Respondent. Lovinger, who accompanied the truck, asked for a checker. He was referred to Joe Davis, one of the employees who was also shop steward. The latter told Lovinger that he would have nothing to do with the shipment because it was "unfair freight," since Capital was on strike. Lovinger took issue with this remark and stated that his company was not on strike and that the picketing at Capital's premises was being conducted by a union which had never been elected as the bargaining representative of the employees. Davis then stated that he would telephone the "Hall" and walked into the terminal. Shortly thereafter he returned and told Lovinger "I'm sorry. I can't handle your freight. It is 'unfair goods.'" Homer Shelley, terminal manager, then told Lovinger, "Speaking for the company I would like the freight * * * but * * * My boys won't handle it, and there is nothing I can do." The Capital truck then left without being unloaded.[5]

5. The foregoing findings are based on the credible and uncontradicted testimony of Lovinger.

Wallace Goodin, a checker at the I. & S dock, testified that after the departure of the truck, he and Davis had a conversation about the incident at which several other employees were present and that during the course of the discussion Davis and he stated that they could handle no more shipments from Capital because there was a picket line at its premises and its freight was "unfair". Mr. Shelley testified, credibly and without contradiction, that some 3 to 4 days later he had a conversation with Steward Davis in which the latter told him that he was in a very difficult position because whenever he called the Union for advice "they would tell him it [Capital freight] was 'hot' goods' and that is all they would tell him." For almost 2 months thereafter Capital brought no more freight to the I & S terminal. Since the entry of the injunctive decree by the Federal District Court in April, however, the I. & S dock employees have handled Capital merchandise without incident.

On about February 23, a Capital truck arrived at the terminal of McDaniel Freight Lines, Inc. (herein called McDaniel). The dock employees of that carrier are likewise members of the Respondent Union. Obra Taylor, an employee who was also shop steward for Local 135, started to unload the shipment. He did not transfer the freight into a McDaniel trailer immediately. Instead, after he had removed it from the Capital truck, Taylor told Irvin Stringer, his foreman, that it was mixed up and that it had to be placed on the dock to be checked for missing items. At the hearing, however, Taylor conceded that "sometime later in the afternoon," and after he had unloaded the freight from the Capital truck, he learned that the merchandise was "unfair."[6] He further testified that

6. The quotations are from Taylor's testimony. At the time Taylor was taking the freight off the Capital truck three men, identified in the record only as having been dressed in business suits, were standing on the dock about 30 feet away. Taylor testified

he told Justin McClain, the terminal manager, that for this reason he would not handle it. In fact, Taylor never did return to the job of transferring the shipment of Capital merchandise to a McDaniel trailer. It remained on the dock for some time and was not shipped out for several days.

A few days later another Capital truck arrived at the McDaniel terminal. When the driver found it impossible to get a checker to unload his freight, McClain instructed Foreman Stringer to take the Capital bills of lading to each of the McDaniel employees on the dock and ask that the shipment be accepted. In a short while Stringer reported to the terminal manager that the men had refused to handle the consignment on the ground that it was "unfair goods". At the hearing Stringer testified on direct examination that the dock employees had told him "in so many words that they refused to handle the freight because the Union had advised them not to". On cross-examination he qualified this testimony with the statement that although none of the employees told him that the Union had ordered that the freight not be handled, "being a former Union member I knew that in the contract there is a 'hot goods' clause that declares that 'unfair goods' does not have to be handled by the Union member * * * Therefore, * * * I made the statement that the Union advised them to, that was my own way of putting it, that it was in the contract, that they didn't have to handle 'unfair goods.'" Subsequent to the above incident and until the Federal Court

that he saw the men and that he talked to them. He described one as a person whom he had seen previously at the union hall. He denied having learned from these men, however, that the Capital merchandise was unfair. On the other hand, he was very hazy as to whom the source of this information could have been. Taylor, a witness called by the General Counsel, was most reluctant and evasive throughout the course of his direct examination.

7. Since his promotion to a supervisory position, Stringer has held a withdrawal card in the Respondent Union.

order of April 13, McDaniel handled no more freight for Capital. Since the latter date, the McDaniel employees have voiced no objection to receiving and shipping Capital merchandise.

On February 27, the Employer sent a truck to Motor Freight Corporation (herein called Motor Freight), another common carrier in Indianapolis whose drivers and dockmen are represented by the Respondent Union. The Capital driver asked dock employee Harry Armstrong to receive the shipment. Armstrong, who is also the union steward at Motor Freight, refused to do so and the truck finally left without unloading the merchandise. At the hearing, Armstrong stated "I just didn't want to handle his freight because they had come through a picket line * * *" After this incident Capital made no further effort to send any merchandise to this carrier for shipment.

On February 27, Herman L. Hacker, an employee of Capital, drove a truck to the terminal of R. D. Motor Express Co. (herein called R. D.). The drivers and dockmen employed by this carrier are also represented by the Respondent Union. As Hacker unloaded the truck, Sam Ervin and Thomas McClara, both employees of R. D., were checking in the shipment. After the truck was partially unloaded Ervin stopped and remarked to Hacker that "they couldn't receive that because it was 'hot goods', * * * they couldn't touch no more of it". The latter declared that Capital was not on strike. Ervin then stated that he would "have to go call the man—call the Union Hall * * *" Ervin thereupon left the dock and in a few minutes returned to tell Hacker "I can't handle that * * * I might get hell if I did, or if I don't."[8] Shorly thereafter, Herbert Ficklin, dispatcher for R. D., called Forrest W. Sewell, the

[8] The foregoing quotations in this paragraph are from the credited testimony of Hacker which was in substantial accord with that of Ervin and McClara.

terminal manager, to discuss the matter. Ervin and Hacker, as well as Ficklin, were present at the ensuing conversation. According to Sewell, "I asked Mr. Ervin what was the matter, and he said that he had some shipments from Capital Paper and he couldn't take them because it was 'hot' * * * I asked him why. He said 'Well I just called the Hall,'[9] and he said that it was 'hot goods' * * * I asked him if he would sign a statement to that effect * * * he said he would." Sewell then had Carol Alfonte, the office manager, type up the following statement which Ervin then read, and signed:

2/27/56

> This is to certify that Capital Paper Co. offered shipments this date for transport to Muncie and Anderson Indiana and shipments were refused at this dock due to the fact that Capital Paper is on strike. Union Hall was called and approval given to refusal.
>
> /s/ Sam Ervin,
> *R. D. Motor Express, Inc.*
> *Indpls., Ind.*

Later that morning, when Meredith Ballard, the union steward at R. D., came to work, Ervin told him about having signed the above document. Shortly thereafter Ballard told Ervin that Mr. Gene San Soucie, president of the Respondent Union, wanted to see him at the Respondent's headquarters. When Ervin reported to San Soucie's office, the latter questioned him as to the whereabouts of the statement he had signed. Ervin suggested that he telephone Sewell. San Soucie did so, while Ervin was present in the office. According to the credible testimony of Ervin, San Soucie opened the conversation by telling Sewell that he was sending a representative over to R. D. to get the document and "if he couldn't get the papers he would have to

9. In fact, Ervin had called the hiring hall which is operated by Local 135.

do likewise." Then, after a pause, San Soucie stated "Well, maybe have to close the place down" or "Shut the doors." At some point during the meeting, Dick Dininger, a business agent for the Respondent entered the office. After his telephone conversation with Sewell, San Soucie had a brief discussion with Dininger.[10] A short while later Dininger arrived at the R. D. terminal and ordered the men out on strike.

That afternoon Gilbert Davis, vice president of R. D., drove from Muncie to Indianapolis and began an extensive search for the two copies of the document which Ervin had signed. He was able to obtain one copy from the mail in which Sewell had initially placed it but was unable to secure the other copy which had been given to Capital Paper. The next morning he met with San Soucie and Dininger and turned over to them the original copy of Ervin's statement. A short while later[11] the president of the Respondent concluded the meeting with the remark, "Well, all right you can go back to work." At about 11 o'clock that morning the men at the terminal returned to their jobs and R. D. resumed operations.

At the hearing the Respondent endeavored to prove that the work stoppage at R. D. had no relation to the request for copies of Ervin's statement and that it arose solely out of a dispute with that firm over the manner in which R. D. was adhering to its contract. Thus, Mr. San Soucie and Mr. Dininger testified that for several weeks prior to February 27 R. D. had not complied with a provision of its contract with Local 135 in regard to bidding on different runs in the city. It is true that about February 1, Dininger had called on Sewell to inform him that bids

10. Ervin was present while the two union officials conversed, but testified that he could not hear the substance of their remarks.

11. Mr. San Soucie testified that the meeting lasted from 15 to 20 minutes.

would have to be posted and put into effect about March 1; that on February 28 at the conference between Davis and the union officials there was some discussion as to bids and that that same day bids were posted at the R. D. terminal in accordance with the Union's request. On the other hand, Dininger conceded that no employee at R. D. had ever filed a grievance as to job bidding and that on February 27, when he called the men at the terminal out on strike, he had no conversation with Sewell in regard to bids. Moreover, Sewell testified, without contradiction, that between February 1 and the day of the strike he had no conversation on the subject of bids with Dininger or any other representative of the Teamsters. It was likewise admitted that during 12 to 15 years that the Union had represented the employees at R. D. there had never been a strike over a grievance. With this background and in the light of Ervin's credited testimony as to the events which occurred in San Soucie's office on the eve of the strike, it is my conclusion, and I find, contrary to the testimony of San Soucie and Dininger, that although on the morning of February 28 the Union broadened its demands to include a stipulation as to bidding procedures, the only original purpose of the work stoppage was to compel R. D. to turn over to the Union the statement which Ervin had signed.

C. Conclusions.

1. The issues raised by the Teamsters' collective bargaining agreement with the secondary employers.

Copies of the contracts which the Respondent has with R. D., I & S. Motor Freight and McDaniel are in the record.[12] They contain, in Article IX, the "protection of rights" or "hot cargo" clause commonly found in Team-

12. A copy of the Respondent's agreement with Allied Grocers was not offered.

ster contracts.[13] The Board has recently held that such clauses are no defense to conduct otherwise violative of the Act. *Local 1976, United Brotherhood of Carpenters and Joiners (Sand Door & Plywood Company)*, 113 NLRB 1210, 1215-1216; *General Drivers, etc., Local No. 886 (American Iron and Machine Works Company)*, 115 NLRB No. 121. Moreover, while a secondary employer may instruct his employees that they cease handling goods sought to be boycotted, that is not the case here for the Respondent

13. The terms of this clause, in relevant part, are as follows:

It shall not be a violation of this Agreement and it shall not be cause for discharge if any employee or employees refuse to go through the picket line of a Union or refuse to handle unfair goods. Nor shall the exercise of any rights permitted by law be a violation of this Agreement. The Union and its members, individually and collectively, reserve the right to refuse to handle goods from or to any firm or truck which is engaged or involved in any controversy with this or any other Union; and reserve the right to refuse to accept freight from, or to make pickups from, or deliveries to establishments where picket lines, strikes, walk-outs or lockouts exist.

The term "unfair goods" as used in this Article includes, but is not limited to, any goods or equipment transported, interchanged, handled, or used by any carrier, whether party to this Agreement or not, at any of whose terminals or places of business there is a controversy between such carrier or its employees on the one hand, and a labor union on the other hand; and such goods or equipment shall continue to be "unfair" while being transported, handled or used by interchanging or succeeding carriers, whether parties to this Agreement or not, until such controversy is settled.

* * * * *

The Union shall give the Employer notice of all strikes and/or the intent of the Union to call a strike of any Employer and or place of business, and or intent of the members to refuse to handle unfair goods. The carriers will be given an opportunity to deliver any and all freight in their physical possession at the time of the receipt of notice * * *

The insistence by any Employer that his employee handle unfair goods or go through a picket line after they have elected not to, and if such refusal has been approved in writing by the responsible officials of the Central States Drivers Council, shall be sufficient cause for an immediate strike of all such Employer's operations without any need of the Union to go through the grievance procedure herein.

does not contend that any of the neutral employers involved in this case gave any such instructions. Indeed, not only did the supervisory personnel request their employees to handle Capital freight, in one instance at Allied Grocers, and in another at McDaniel, the foreman on duty went to each individual employee on the dock to ask, without success, that he handle the Capital shipment then waiting to be received. In its brief the Respondent argues that it is significant that no employer took disciplinary action against any of these employees for their having refused to handle Capital freight. That, however, as the Board has held in another case, is immaterial to a disposition of the issues here.[14]

The Respondent notified the employers with whom it had collective bargaining agreements that it expected full compliance with the foregoing "hot goods" clause. The record contains a copy of a form letter, signed by the Respondent, dated March 20, 1956, and addressed to terminal managers, in which the addressee is reminded that he is "hereby *again* notified [emphasis added] that the Union is engaged in a strike * * * with Capital Paper Company * * *" and that the Union expects the terminal "to fully comply with the provisions of Article IX; and if you do not, the Union will act accordingly." The latter phrase in the letter is, of course, a pointed reference to that paragraph in Article IX which provides that the insistence by an employer that his employees handle unfair goods shall be sufficient cause for an immediate strike.

14. See *American Iron and Machine Works Company, supra*, where the Board said at (p. 2):

> Thus, while Section 8 (b) (4) (A) does not forbid the execution of a hot cargo clause or a union's enforcement thereof by appeals to the employer to honor his contract, the Act does, in our opinion, preclude enforcement of such clause by appeals to employees, and *this is so whether or not the employer acquiesces in the union's demand that the employees refuse to handle the "hot" goods.* (Emphasis added.)

2. The responsibility of Local 135 for the conduct of its stewards.

The position of job steward for the Respondent Union is provided in Article III of the collective bargaining agreements which Local 135 has with over-the-road and local cartage carriers. This article, in all of the foregoing contracts, provides, in relevant part:

> The employer recognizes the right of the Union to designate a job steward and alternate to handle such Union business as may, from time to time, be delegated to them by the Union * * *

In another provision of the same contracts, Article V, stewards are granted superseniority for all purposes. Article XXX of the local cartage agreement[15] further provides that the employer agrees to the posting of notices "by an elected or appointed official of the Local Union." There was uncontradicted testimony in the record that at Allied and at the motor carrier terminals here involved, the stewards were elected by the employees at each of such companies. In the performance of their duties stewards accompany employees who have grievances in discussion with management, and in the case of a written grievance the grievance form has a place for the steward to sign. The stewards also obtain insurance forms from the union hall for employees who desire them, receive the stamps showing that a member has paid his dues and, in turn, pass them out to the employees on the dock. They also report broken equipment or equipment needing repair to the terminal manager, and attend stewards' meetings at the union hall.

The Union denies responsibility for the acts of any of the stewards here involved on the ground that they are

15. This was in effect at R. D., Motor Freight, McDaniel, and I. & S.

selected by their fellow employees, not by the Respondent, so that they are in no sense agents of the Union.

The Act contains a very broad definition of the term "agent"[16] which has been construed by the Board in numerous decisions. There may be situations in which a labor organization is not responsible for the acts of a steward, even though he acts within the scope of his authority. In this case, however, the Union did not deny that the stewards here involved were authorized to act as such. Consequently, it seems completely immaterial to the question of responsibility whether the steward is appointed to that post by a union business agent or whether, as here, the employees at a terminal select one of their number as steward and the Union then "designates" that individual to act as such pursuant to the terms of Article III of the collective bargaining agreement. From the facts set forth above it is plain that the stewards perform many significant duties in furthering the interests of the Union and, more importantly, that they serve as a channel of communication for the members and as on-the-job representative for the Union at each of the terminals where the Respondent has "designated" a steward. Thus, when after a telephone call to, or other contact with, the union headquarters, the stewards told their fellow employees that Capital was on strike or that its freight was "unfair" or "hot," it is my conclusion they were acting within the scope of their authority and that their conduct was likewise binding upon the Union. *Local 657, International Brotherhood of Teamsters, etc. (Southwestern Motor Transport)*, 115 NLRB No. 155, p. 7; *International Brother-*

16. Section 2 (13) provides:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

hood of Teamsters, etc. Local 182 (Harold R. Jones), 111 NLRB 952, 953, enfd., 228 F. 2d 83 (C. A. 2); *United Brotherhood of Carpenters and Joiners, Local 55 (Grauman Company)*, 100 NLRB 753, 754, enfd. 205 F. 2d 515 (C. A. 10); *Local 1150, UERMW, etc. (Cory Corporation)*, 84 NLRB 972, 973; *Perry Norvell Company*, 80 NLRB 225, 243-244.

3. The allegation that the Respondent induced and encouraged the secondary employees not to handle Capital freight.

The Respondent contends that those employees who refused to handle Capital freight acted independently and without direction from the Union. At the hearing the union officers denied ever having ordered or instructed their members not to handle Capital freight.

In construing the meaning of the words "induce" and "encourage" as they appear in Section 8 (b) (4), the Supreme Court has said "The words 'induce' or 'encourage' are broad enough to include in them every form of influence and persuasion." *IBEW, Local 501* v. *N. L. R. B.*, 341 U. S. 694, 701-702. In another case, where the question was whether a union had induced a strike by telling its members that it did not have a contract with the employer in question, the Board observed "A strike call may be given in a forthright fashion, or informally in a manner that is understood by the initiated." *Amalgamated Meat Cutters, etc., Local 421 (Great Atlantic & Pacific Tea Company)*, 81 NLRB 1052, 1057. When a steward such as Davis called the union hall for instructions as to handling Capital freight he was told only that it was "hot."[17] No more

17. This finding is based on the credible, uncontroverted testimony of Terminal Manager Shelley as to a statement made to him by Davis. Since Davis' statement was made "concerning a matter within the scope of his authority as an agent of the Respondent [Shelley's], testimony concerning that statement is admissible, not

explicit advice was needed, for it is a well established policy of the Union, plainly set forth in its contracts, that unfair freight is not handled. In addition, many of the Respondent's members who appeared as witnesses in this case testified that they would not handle unfair freight. In the instant case it was only necessary for the union hall or the steward to tell the men on the dock that Capital freight was "hot" or that it had "crossed a picket line" to signal the men that they were not to handle the freight. A direct order from the Union would not have been more effective.

In the light of the foregoing, therefore, I conclude, and find, that the Respondent induced and encouraged its members employed at the various secondary employers here involved not to handle Capital freight in the following instances:

(1) On February 14, at Allied Grocers when Steward Doss told his fellow employees, among them being Andrew Freeman, that he had refused to receive a Capital shipment because that Company was on strike and, further, that he "had called the Union on it";

(2) On February 27, at R. D. when Sam Ervin telephoned the union hiring hall and was told that Capital freight was "hot goods";

(3) And on February 15, at I & S, when Steward Davis told his fellow employees that they could handle no more shipments from Capital because there was a picket line at its premises and its freight was "unfair". In each of the foregoing incidents the statements of the steward or the information from the union hall that Capital was being picketed and its merchandise was unfair were plainly in-

only as evidence that the statement was made, but also as evidence bearing on the truth of the subject matter of the statement". *Local 657, International Brotherhood of Teamsters, etc., (Southwestern Motor Transport, Inc.)*, 115 NLRB No. 155, p. 8.

tended to induce and encourage those employees not to handle the products of the primary employer.

Moreover, the stewards, as agents of the Union and employees of the secondary employers, engaged in "concerted refusal(s) in the course of their employment" to handle Capital freight in the following instances:[18]

(1) On February 14, at Allied Grocers, when Union Steward Louis Doss, and his alternate, Shirley Green, refused to work on any Capital freight;

(2) On the following day, at I & S Motor Express when Union Steward Joe Davis stated that he would have nothing to do with a Capital shipment because it was "unfair freight";

(3) On or about February 23, at McDaniel, when Union Steward Obra Taylor refused to complete work on a load of Capital products immediately after discovering that it was "unfair";

(4) On February 27, at Motor Freight, when Union Steward Armstrong refused to assist in unloading a Capital truck because it "had come through a picket line"; and

(5) Early in May, at Allied Grocers, when Doss again refused to receive a shipment from Capital.

From the above findings it is apparent that the employees of secondary employers here involved, including the union stewards whose duties required them to handle freight, ceased handling Capital freight at the time the Respondent began picketing the Capital premises and did not handle it thereafter until the Federal Court order of April 13. The

18. Since their conduct was part of an overall pattern of activity by the Respondent, it is immaterial that in some instances ity by the Respondent, it is immaterial that in some instances *Meat Cutters* v. *N. L. R. B.*, ... F. 2d ..... (C. A. D. C.), decided June 22, 1956, 38 LRRM 2289, 2290-2291; *Seattle District Council of Carpenters, etc. (Cisco Construction Company)*, 114 NLRB No. 12, p. 3; *Truck Drivers, etc., Local 705 (Direct Transit Lines)*, 92 NLRB 1715, 1721.

direct evidence of inducement and encouragement, on the part of the stewards and agents of the Union, provides a background against which the actions of the employees at McDaniel Freight Lines who refused to receive a shipment from Capital late in February become explainable only as a part of a pattern of conduct induced and encouraged by the Respondent. Consequently, I infer and find that the refusal on the part of the McDaniel employees on that occasion was likewise induced and encouraged by the Respondent. *Local 657 International Brotherhood of Teamsters, etc.* (*Southwestern Motor Transport*), 115 NLRB No. 155, pp. 9-10.

4. The allegation that the objectives of the Respondent were proscribed by Section 8 (b) (4) (A) and (B).

The General Counsel alleged that an object of the Respondent's conduct was (1) to force the various secondary employers here involved to cease doing business with Capital and (2) to force or require Capital to recognize Local 135 as the bargaining agent for its employees. This was denied by the Respondent Union.

In arriving at a conclusion as to the Respondent's objectives in the activity described above, the following facts are pertinent: In December 1955, the Respondent requested recognition as the bargaining agent for Capital's employees and asked that the Employer enter into a contract covering wages, hours and other terms and conditions of employment. The following month the Union participated in a hearing on its representation petition. On February 13, however, and just before the Board issued its decision directing an election, the Respondent established a picket line at the Employer's premises and shortly thereafter sought to withdraw the representation petition. The Union now urges that it is not seeking recognition and that the sole purpose of the picketing is to protest what it terms

the Employer's unfair labor practices.[19] In the order denying the Union's request for withdrawal of its representation petition, the Board stated that "the present picketing engaged in by the Petitioner is action that is inconsistent with request for withdrawal * * *" This was plainly correct, for despite any contentions of the Respondent as to the objectives of the picketing, it is obvious, as the Board has held in other cases, that, despite any disclaimer, the Union was, and is, attempting to obtain, by means of picketing, conditions and concessions normally sought by collective bargaining, and to compel the Employer to bargain without regard to the Union's representative status. For this reason, it is my conclusion, and I find, that the picketing conducted by the Respondent in this case has been tantamount to a continuing demand for recognition. *Operating Engineers, Local 12 (Crook Company)*, 115 NLRB No. 9, pp. 8-10; *Construction and General Laborers Union, Local 320 (Armco Drainage and Metal Products, Inc.)*, 93 NLRB 751, 752; *Curtis Brothers, Inc.*, 114 NLRB No. 27; *McAllister Transfer, Inc.*, 105 NLRB 751, 752; *Francis Plating Co.*, 109 NLRB 35, 36; *Petries*, 108 NLRB 1318, 1319; *Owens-Illinois Glass Co.*, 112 NLRB 172, 175-176.[20]

19. On February 13 the Union filed a charge alleging that Capital had violated Section 8 (a) (1). On May 1 the Regional Office and the Employer entered a settlement agreement as to this charge and the latter posted a notice in compliance therewith. On May 18 the Union filed a new charge in which it alleged that the Employer had violated Section 8 (a) (3) by refusing to reinstate the strikers. The Respondent's picketing of the Capital premises, which began on February 13, continued throughout this period and was still in progress at the time of the hearing. An offer by the Respondent to adduce proof of these alleged unfair labor practices was rejected by the Examiner on the ground that testimony as to those issues was relevant only to a hearing on the charges filed against the Employer.

20. It is significant that when the Union established a picket line at Capital's premises only 17 employees went on strike, whereas some 50 others in the unit found appropriate by the Board (Case No. 35-RC-1250) remained at work.

The incidents described above arose shortly after the Union elected not to rely on Board procedures to gain certification but to obtain recognition by resort to a picket line. Thus, on February 14, the day after the Respondent began its picketing, the stewards at Allied Grocers concertedly refused to handle Capital freight and, in addition, induced and encouraged the employees there to do likewise. In the 2-week period immediately following that date, the Union, through its stewards and agents, engaged in the same conduct at the terminals of the motor carriers involved in this case. After these refusals to handle its freight, Capital made no further deliveries to any of these secondary employers until after the date of the injunction issued by the Federal District Court.[21]

It is my conclusion, on the facts set out above, that an object of the foregoing conduct by the Respondent was to terminate the business relations between the secondary employers and Capital and further, by so doing, to compel Capital to recognize it as the representative of the employees, notwithstanding the Union's lack of certification under Section 9 of the Act. Accordingly, I find that the concerted refusals of Respondent's stewards to handle Capital freight in the course of their employment and the

21. The only exception to this finding was at Allied where Capital, for a time, made shipments via Merchandise Warehouse, a nonunion firm, which reconsigned the shipments so that Capital's name did not appear on the bills of lading when the freight eventually reached the Allied dock. Even after the entry of the Federal Court order, however, Steward Doss and his fellow employees refused to handle a direct shipment from Capital and, as a result, the management of Allied discontinued its business relations with Capital.

The Examiner rejected an offer by the Respondent to prove that carriers other than those named in the complaint had continued to handle Capital freight throughout the period in question. To prove the allegations in the complaint it was not necessary that the General Counsel establish that the Respondent had, without exception, induced and encouraged the employees of *all* employers doing business with Capital to engage in concerted refusals to handle its products for the objectives proscribed in Section 8 (b) (4).

inducement and encouragement which the Respondent's agents gave the secondary employees to do likewise had, among their objectives, if not their principal objectives, those condemned by Section 8(b)(4)(A) and (B) of the Act. Upon the entire record in the case, therefore, I am convinced, and find, that the essential elements of a violation—inducement, refusal, and unlawful objectives—have been proved and that by engaging in the above-described conduct the Respondent Union has violated Section 8(b)(4)(A) and (B).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE.

The activities of the Respondent set forth in Section III, above occurring in connection with the operations of Capital, described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY.

Having found that the Respondent has violated Section 8(b)(4)(A) and (B) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. In determining the scope of the recommended order it is relevant to note that in three other cases within the recent past the Board found that the Respondent here involved violated Section 8(b)(4). *Local Union No. 135, affiliated with International Brotherhood of Teamsters (Irving J. Cooper, et al.)*, 101 NLRB 1284; *Local Union No. 135, affiliated with International Brotherhood of Teamsters (Hoosier Petroleum Company, Inc.)*, 106 NLRB 629, enfd., 212 F. 2d 216 (C. A. 7); and *Local Union No. 135, affiliated with Inter-*

national Brotherhood of Teamsters (Marsh Foodliners, Inc.), 114 NLRB No. 108. Moreover, in the *Cooper* case the Board entered a broad order against this Respondent. In the light of the present record and this background I shall recommend a similar order here to prevent a recurrence of the unlawful conduct found in this case. Further, since the Board found it appropriate in the *Marsh Foodliners'* case to direct that the scope and range of the Respondent's activities made it advisable to require the latter to publish the terms of the notice in an Indianapolis daily newspaper of general circulation, I shall recommend that a similar provision be incorporated in the present order. See also *United Association of Journeymen, etc. (Frank W. Hake)*, 112 NLRB 1097, 1102.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law.

1. Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, has, and its agents have, engaged in unfair labor practices within the meaning of Section 8(b)(4)(A) and (B) of the Act by inducing and encouraging employees of Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation and R. D. Motor Express to engage in a strike or concerted refusal in the course of their employment to perform services for their respective employers, objectives thereof being:

(a) To force and require such employers to cease doing business with Capital Paper Company and Consolidated

Sales, Inc., and to force the latter companies to recognize or bargain with Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, although that organization has not been certified as the bargaining representative of Capital and Consolidated employees in accordance with the provisions of Section 9 of the Act.

(3) The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Recommendations.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, I recommend that Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, its officers, representatives, agents, successors, and assigns, be ordered to:

1. Cease and desist from inducing or encouraging the employees of Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation, R. D. Motor Express or of any other employer (other than Capital Paper Company and Consolidated Sales, Inc.) to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (1) to force or require Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation, R. D. Motor Express, or any other employer to cease doing business with Capital Paper Company and Consolidated Sales, Inc., or with any other per-

son,[22] or (2) to force or require Capital Paper Company and Consolidated Sales, Inc., to recognize or bargain with Respondent Local 135 as the representative of their employees unless Local 135 is certified as the representative of such employees pursuant to the provisions of Section 9 of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Post at its business offices at Indianapolis, Indiana, and all other places where notices to its members are customarily posted, copies of the notice attached hereto as "Appendix." Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by an official representative of Local 135, be posted immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Local 135 to insure that said notices are not altered, defaced, or covered by any other material;

(b) Cause a copy of said notice to be printed, at the Respondent's expense, in a newspaper of general circulation in Indianapolis, Indiana;

(c) Mail to the Regional Director of the Ninth Region signed copies of said notice for posting by Allied Grocers, I & S Motor Express, McDaniel Freight Lines, Motor Freight Corporation, and R. D. Motor Express, should they be willing to post the same, in places where notices to their employees are customarily posted;

22. For examples of the same or similar type of broad order see *Cooper, supra*, at 4285; *Pasco-Kennewick Building and Construction Trades Council et al. (Cisco Construction Co.)*, 111 NLRB 1255, 1258; *General Teamsters, Chauffeurs and Helpers, Local Union No. 249 (Crump, Inc.)*, 112 NLRB 311, 313; *United Association of Journeymen, etc. (Frank W. Hake)*, 112 NLRB 1097, 1102; and *Casket Makers Local 3128 (Metropolitan New York and New Jersey Casket Manufacturers Association)*, 114 NLRB No. 207.

(d) Notify the said Regional Director, in writing, within 20 days from the date of this Intermediate Report of the action taken by it to comply therewith.

I further recommend that unless the Respondent shall within 20 days from the receipt of this Intermediate Report notify the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid.

Dated at Washington, D. C., this 24th day of August, 1956.

s/ ROBERT E. MULLIN,
Trial Examiner.

APPENDIX:

NOTICE TO ALL MEMBERS OF LOCAL 135, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

Pursuant to

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We Will Not induce or encourage the employees of any employer other than Capital Paper Company and Consolidated Sales, Inc., to engage in a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on goods, articles, or commodities, or to perform any services, where an object thereof is to force or require any employer to cease doing business with any other person or to force or require Capital Paper Company and Consolidated Sales, Inc., to recognize the undersigned union as the representative of their employees, unless and until certified by the National Labor Relations Board.

LOCAL 135, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX "F".

Section 8 (b) (4) (A) and (B) of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 140; 29 U. S. C., Sec. 158 (b) (4) (A) and (B):

"Section 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; * * *,"